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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,188	12/21/2006	Pere Escriba Nogues	ESCRIBA NOGUES-I PCT	1521
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COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			BLIZZARD, CHRISTOPHER JAMES	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,188	<b>Applicant(s)</b> ESCRIBA NOGUES, PERE
	<b>Examiner</b> CHRISTOPHER BLIZZARD	<b>Art Unit</b> 3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 May 2006.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 9-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 9-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 05 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date 5/15, 7/10, 9/14.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

1. This office action is in response to amendment filed 5/15/2006. As directed claims 1-8 were cancelled, claims 9-19 were added, and no claims were amended. Therefore, claims 9-19 are currently pending in this application.

#### ***Drawings***

2. The drawings are objected to because of blurred lines and illegible figure numbers. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "diagonal steel

bars" (claim 15), "U shaped caps" (claim 16), "empty space" (claim 12), and "sign" (claim 12), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: lack of antecedent basis for the diagonal steel bars found in claim 15, and lack of antecedent basis for the U shaped caps found in claim 16.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 19 contains multiple instances of subject matter that does not comply with the enablement requirement. The limits of the machine having a "recognition system" and "frequency variator" are not known elements to one of skill in the art. The limit "this deposit is attached independently to the structure" make enablement impossible because how could something be independent of something that it is attached to?

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 9, 10 and 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 9 recites the limitation "the floor" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 9 recites the limitation "the floor", it is unclear if this is a component of the invention which renders the claim indefinite.

11. Claim 9 recites the limitation "prevent the transmission of vibrations", there is insufficient antecedent basis for this limitation in the claim.
12. Claim 10 recites the limitation "these spheres may also be decorative", it is unclear how this further limits the claim and renders the claim indefinite.
13. Claim 12 recites the limitations "may be used to place a sign" and "any other kind of drawing", it is unclear how these further limit the claim and render the claim indefinite.
14. Claim 12 recites the limitation "these horizontal bars" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
15. Claim 13 recites the limitation "the two lower horizontal bars" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
16. Claim 14 recites the limitation "below the horizontal bar supporting the motor" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
17. Claim 15 recites the limitation "diagonal steel bars" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim.
18. Claim 15 recites the limitation "the upper section" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.
19. Claim 15 recites the limitation "by way of diagonal steel bars" it is unclear whether this is method of assembly or component of the machine which renders the claim indefinite.
20. Claim 16 recites the limitation "U shaped caps" in the third line of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 9 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leivseth (2004/0068211).

23. Regarding claim 9 and 17, Leivseth discloses a machine for physical stimulation consisting of a structure which vibrates in its entirety, a vertical and rectangular section (17) with vertical sides consisting of parallel tubes (fig. 1) which forms right angles to form the parallel edges (10) of a horizontal rectangular platform (14) for the placing of the feet (para [0018], lines 1-2), which has supporting feet (12) on its underside (fig. 1) equipped with anti-vibratory rubber stoppers to prevent transmission of vibrations to the floor (para [0017], lines 6-10). Leivseth does not disclose the parallel tubes bending at right angles to form the parallel edges of the horizontal platform. It would have been obvious to one having ordinary skill in the art at the time the invention was made have the parallel bars bend at right angles to form the parallel edges of the horizontal platform, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

24. Regarding claim 13, Leivseth discloses between two lower horizontal bars (10) an external vibrating motor (16) is attached, which funtions based on the movement of unequal masses (para [0020]).

25. Regarding claim 14, Leivseth disclose the claimed invention except for the location of the motor being above where the bars bend at right angles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to relocate the engine, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

26. Regarding claim 15, Leivseth discloses the use of diagonal bars (11) to connect the exterior of each side of the base (10) (para [0017], lines 5-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the diagonal bars from steel since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

27. Regarding claim 16, Leivseth discloses the use of U shaped caps (fig. 1, near #21) screwed to the structure with screws (20).

28. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leivseth (2004/0068211) in view of Hackett (2,230,033).

29. Regarding claim 10, Leivseth discloses the claimed invention except for the parallel tubular bars each finished off at the top end with a spherical figure. Hackett teaches a device with a foot platform with a foot platform and parallel tubular bars (7) finished off at the top end with a spherical figure (8) (fig. 1), meant to be grabbed in

order to properly balance the user. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vibrating machine of Leivseth with spherical figures as taught by Hackett in order to provide the advantage of providing a means for the user to balance themselves while using the machine.

30. Claim 11, 12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leivseth (2004/0068211) in view of Greenberg (2,209,160).

31. Regarding claim 11, Leivseth discloses the claimed invention with one horizontal bar between the two parallel tubes (fig. 1) but does not disclose two horizontal bars between the two parallel tubes. Greenberg teaches moving platform with two parallel tubes (48) attached between are two horizontal bars (49, 50) (fig. 1), either of which can be grabbed by the user to act as a handle (page 2, lines 14-16). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vibrating machine of Leivseth with horizontal bars as taught by Greenberg in order to provide the advantage of multiple height users being able to use the machine without adjusting the handles.

32. Regarding claim 12, the combination of Leivseth and Greenberg teach the disclosed the claimed invention except for two parallel bars below the two parallel bars at the top of the parallel tubes. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the combination of Leivseth and Greenberg having a plurality of horizontal parallel bars, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

33. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leivseth (2004/0068211) in view of Chang (5,716,331)

34. Regarding claim 18, Leivseth discloses the claimed invention except of a horizontal structure attached to the base. Chang teaches a vibrating machine with a horizontal structure (12) to place on the floor with the base of the vibrating machine attached to it (fig. 3) using screws (fig. 3), in between the horizontal structure and base are anti-vibratory rubber stoppers (211). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the vibrating machine of Leivseth with a horizontal structure as taught by Chang in order to provide the advantage of providing more separation of vibrating parts from the floor.

35. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leivseth (2004/0068211) in view of Worthington (2,271,382).

36. Regarding claims 19, Leivseth discloses the claimed invention including a means recognizing if a user is present (para [0025]), and a time (para [0029]), but does not disclose a coin deposit. Worthington teaches a vibrating machine with a coin deposit (20). It would have been obvious to one of ordinary skill in the art to provide the vibrating machine of Leivseth with a coin deposit as taught by Worthington in order to provide the advantage of receiving monetary compensation for use of the machine.

#### ***Conclusion***

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coury (2,566,484) a vibrator machine with U shaped handle and

multiple horizontal bars, Slater (5,046,485) a vibrating scale with coin deposit, and Thurmer (3,732,860) a vibrating platform with foam support blocks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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